

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of:

Local Telephone Competition and
Broadband Reporting

WC Docket No. 04-141

Local Competition and Broadband
Reporting

CC Docket No. 99-301

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION
AND OF THE PEOPLE OF THE STATE OF CALIFORNIA ON THE
NOTICE OF PROPOSED RULEMAKING AND ORDER ON
RECONSIDERATION REGARDING FORM 477 LOCAL COMPETITION
AND BROADBAND DATA GATHERING PROGRAM**

The California Public Utilities Commission and the People of the State of California (California or CPUC) submit these Comments to the Federal Communications Commission (FCC or Commission) on its Notice of Proposed Rulemaking (NPRM) and Order on Reconsideration Regarding Form 477 Local Competition and Broadband Data Gathering Program released on April 16, 2004. In the NPRM, the FCC seeks comment on a number of its proposals to improve the Form 477 data program for broadband deployment, local telephone service competition, and mobile telephone service provision. While we generally support the FCC's proposals to refine the Form 477 reporting requirements in all three of these areas of telecommunications, our comments below are limited to broadband services.

I. EXTENSION OF THE SUNSET DATE

As the NPRM states, the Form 477 program is currently scheduled to sunset in March 2005. The FCC proposes to extend the sunset date to March 2010 so that it can continue to monitor the rapid changes taking place in the telecommunications industry. The CPUC supports the FCC's proposal and recommends that this program be extended for another five years. The data contained in Form 477 has been an invaluable source of information for California to identify and track the deployment of broadband services. We have used the Form 477 data to prepare three competition reports for the California legislature and the Governor's office and are currently using this data to prepare a legislative report on broadband deployment. We have found that the information collected through the Form 477 is the best data available on broadband services to date.

II. GRANULAR DATA FROM BROADBAND SERVICE PROVIDERS

We support the FCC's proposal to get more granular data on broadband deployment as well. According to the NPRM, the facilities-based providers of broadband connections and local exchange carriers are currently required under Form 477 to report a list of zip codes in which they serve end users, for each state for which they complete a form. (NPRM, ¶ 3.) However, the Commission has observed that zip code data as reported in the current version of the Form 477 do not allow the Commission to determine whether a zip code is listed because one business user is connected to the Internet via a T1 facility or whether broadband service is more widely available to residential users. (NPRM, ¶ 4.) Thus, the Commission states that improving the

reporting requirements for broadband service providers would yield more useful information on broadband deployment.

The CPUC supports collecting more granular data from broadband service providers. We recommend that the FCC change the reporting requirements to require filers to provide more detailed information on a zip code basis. Filers should be required to categorize their broadband line reporting by the various “speeds”¹ offered and by the technology used. Filers should also submit the number of broadband connections for each zip code they serve. By breaking down broadband subscribership data at the zip code level, policy makers will be able to obtain the level (speed) of broadband availability as well as the demand information – at what speeds people are purchasing the broadband connections throughout the United States.

Zip code information is particularly critical for a state the size of California. Although statewide numbers of broadband data is useful, because this information is general in nature, it limits our ability to understand the true extent of broadband availability and deployment. Zip code data, thus, will provide more detailed information on broadband penetration and will allow us to identify and track which local areas are and are not being served by broadband service providers.

III. REPORTING THRESHOLD

Currently, filers are exempted from reporting broadband data if they have fewer than 250 high-speed lines or wireless channels connecting end users in a state to the

¹ The term “speed” is synonymous and/or interchangeable with the terms “bandwidth” and “transfer rate.”

Internet. The FCC seeks comment on whether eliminating or lowering this reporting threshold for broadband data would yield significantly improved data about broadband deployment, particularly in rural areas. (NPRM, ¶ 10.) The CPUC recommends that the FCC eliminate this reporting threshold of 250 connections within the state. Lack of broadband availability in rural areas is an often-heard complaint and policy concern for both the FCC and states. Thus, by collecting this information, we will be in a better position to respond to this growing concern.

Furthermore, by exempting such information from filers, the Form 477 reports may be missing the full extent of broadband deployment, especially in sparsely populated areas. Lastly, the NPRM notes that small facilities-based providers that filed Form 477 on a voluntary basis in the past found that only a few questions applied to their situations. Thus, any reporting burden that would be placed on these small providers appears to be minimal.

IV. CATEGORIZATION OF BROADBAND CONNECTIONS BASED ON TRANSFER RATES

The FCC also seeks comment on whether it should modify the Form 477 reporting instructions to require filers to categorize broadband connections according to the information transfer rates actually observed by end users. (NPRM, ¶ 7.) The CPUC believes the transfer rate categorization should be based on the provider offerings, not on the transfer rates actually observed by end users. It would very difficult and costly for providers to obtain transfer rate information actually observed by each and every subscriber and there are many factors that could influence actual speeds delivered to end

users. Additionally, requiring filers to categorize transfer rates actually observed by end users would be necessary if the FCC or states were considering service quality or consumer protection monitoring or regulation to determine whether or not the provider is delivering the service it promised. The NPRM, however, does not indicate or suggest that the FCC intends to monitor or regulate service quality as part of the Form 477 program. Thus, it appears that the potential burden that would be imposed on the filers seems to outweigh any potential benefit this categorization may have on the FCC or states.

V. FCC'S FORM 477 CONFIDENTIALITY POLICY

The FCC in the NPRM states that it does not propose to change its existing confidential policy regarding the overall protection that it affords the Form 477 competitively sensitive data. The Commission, however, asks whether this data is still competitively sensitive after the passage of time, such as a year or two and therefore, should remain confidential. The Commission's current publication procedures allow it to publish only historical aggregated information, which does not contain any competitively sensitive information.

The CPUC believes the FCC should not modify its existing confidentiality protections because these protections assure filers that their compliance with the Form 477 reporting requirements will not result in disclosure of confidential business information. The aggregated data is sufficient for policy makers to know the extent of broadband subscribership and the availability of broadband service offerings at a local level. It is not necessary to publish the names of individual companies or the number of

customers for each of those companies to obtain the benefit of the aggregated data.

Furthermore, there is little to no benefit of disclosing the true values of old data. Thus, the FCC should not modify its existing confidentiality policy.

VI. SHARING OF THE FORM 477 DATA WITH STATE COMMISSIONS

The FCC should continue to share state-specific Form 477 data with state commissions that agree to the FCC's confidentiality requirements. The CPUC has relied on the Form 477 data for its own internal analysis as well as for reporting trends in the broadband and local competition market to the California legislature and the Governor's office. The Form 477 data has been an invaluable source of information for the CPUC to identify and track the development of local service competition and broadband deployment trends.

VII. "TAKE RATE" PENETRATION INFORMATION

The CPUC also recommends that broadband service providers report "take rate"² penetration information, either on a statewide or on a zip code basis. The information will allow policy makers to understand the demand and changes in the demand over time. With this knowledge, both the FCC and states will be better equipped to consider how best to encourage broadband deployment.

² The term "take rate" means, for a specific broadband service in a zip code, the number of broadband customers divided by the number of households/businesses that have access to that broadband service.

VIII. CONCLUSION

The CPUC supports many of the FCC's proposals to improve the Form 477 program. We support gathering more granular data on a zip code basis from broadband service providers. We also support extending the sunset date for the Form 477 program from March 2005 to March 2010. We likewise support maintaining the current confidentiality policy and sharing of the state-specific Form 477 data with state commissions. Lastly, we support categorizing transfer rates based on the provider offerings, not based on transfer rates actually observed by end users.

Respectfully submitted,

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